



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

C-570-019

Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China:
Initiation of Countervailing Duty Investigation

AGENCY: Enforcement & Compliance, International Trade Administration, Department of Commerce

DATES: Effective Date: (Insert date of publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Paul Walker or Susan Pulongbarit, AD/CVD Operations, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202.482.0413 or 202.482.4013, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On August 26, 2014, the Department of Commerce (the “Department”) received a countervailing duty (“CVD”) petition concerning imports of boltless steel shelving units prepackaged for sale (“boltless steel shelves”) from the People’s Republic of China (“PRC”), filed in proper form by Edsal Manufacturing Co., Inc. (“Petitioner”), a domestic producer of boltless steel shelves. The CVD petition was accompanied by an antidumping duty (“AD”) petition concerning imports of boltless steel shelves from the PRC.¹ On August 27, and August 28, 2014, the Department issued additional requests for information and clarification of certain

¹ See Letter from Petitioner, regarding “Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China,” dated August 26, 2014 (hereafter referred to as the “Petition”).

areas of the Petition. Based on the Department's requests, Petitioner timely filed additional information pertaining to the Petition on September 2, 4, and 11, 2014.²

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the "Act"), Petitioner alleges that producers/exporters of boltless steel shelves in the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and Petitioner has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department to initiate (see "Determination of Industry Support for the Petition" below).

Period of Investigation

The period of investigation ("POI") is calendar year 2013, in accordance with 19 CFR 351.204(b)(2).

Scope of the Investigation

The product covered by this investigation is boltless steel shelving from the PRC. For a full description of the scope of the investigation, see the "Scope of the Investigation" at the Appendix of this notice.

Comments on the Scope of the Investigation

During our review of the Petition, we solicited information from Petitioner to ensure that the proposed scope language is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's

² See Petitioner's September 2, 4 & 11, 2014 responses.

regulations³, we are setting aside a period for interested parties to raise issues regarding product coverage. If scope comments include factual information,⁴ all such factual information should be limited to public information. The Department encourages all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on October 6, 2014, which is 20 calendar days from the signature date of this notice.⁵ Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on October 16, 2014, which is 10 calendar days after the initial comments. The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All comments must be filed on the record of the PRC CVD investigation, as well as the concurrent PRC AD investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date set by the Department. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW,

³ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

⁴ See 19 CFR 351.102(b)(21).

⁵ The 20th day falls on October 5, 2014. As this is a Sunday, we are applying our Next Business Day Rule. See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

Washington, DC 20230, and stamped with the date and time of receipt by the deadline established by the Department.⁶

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department held consultations with the Government of the PRC (hereinafter, the “GOC”) with respect to the Petition on September 10, 2014.⁷

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic

⁶ Information on help using IA ACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

⁷ See “Countervailing Duty Petition on Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Consultations with the Government of the People’s Republic of China,” dated September 10, 2014.

like product. The U.S. International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,⁸ they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.⁹

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that boltless steel shelves, as defined in the scope of the investigation, constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.¹⁰

⁸ See section 771(10) of the Act

⁹ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

¹⁰ See Countervailing Duty Investigation Initiation Checklist: Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China (“Initiation Checklist”), at Attachment II, Analysis of Industry Support for the Petitions Covering Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China (“Attachment II”). This checklist is dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit, Room 7046 of the main Department of Commerce building.

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of Investigation” section above. To establish industry support, Petitioner provided 2013 production quantities of the domestic like product produced by those in support of the petition, and compared this to the estimated total production of the domestic like product for the entire domestic industry.¹¹ Petitioner estimated total 2013 production of the domestic like product using their own production data and knowledge they obtained about the industry.¹² We have relied upon data Petitioner provided for purposes of measuring industry support.¹³

Based on information provided in the Petition and supplemental submission, we determine that Petitioner has met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.¹⁴ Based on information provided in the Petition, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.¹⁵

¹¹ See Volume I of the Petition, at 3-4 and at Exhibits GEN-1 and GEN-2.

¹² Id.

¹³ See Initiation Checklist, at Attachment II.

¹⁴ Id.

¹⁵ Id.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department initiate.¹⁶

Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, Petitioner contends that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.¹⁷

Petitioner maintains that the industry’s injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; decline in key trade and financial variables; capacity utilization-ratio decline; and decline in financial performance.¹⁸ We have assessed the allegations and supporting evidence regarding material

¹⁶ Id.

¹⁷ See Volume I of the Petition, at 16 and at Exhibit GEN-6.

¹⁸ See Volume I of the Petition, at 17-20, at Exhibits GEN-2, GEN-6, AND GEN-9, and GEN-10.

injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.¹⁹

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the Petitioner supporting the allegations.

The Department has examined the Petition on boltless steel shelves from the PRC and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether producers/exporters of boltless steel shelves in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* the CVD Initiation Checklist which accompanies this notice.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of 18 of the alleged programs, and part of an additional alleged program. For the other one program and part of another program alleged by Petitioner, we have determined that the requirements for initiation have not been met. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the CVD Initiation Checklist.

Respondent Selection

The Department normally selects respondents in a CVD investigation using CBP entry data. However, for this investigation, the HTSUS numbers the subject merchandise would enter

¹⁹ *See* Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Steel Shelves from the People's Republic of China.

under, 9403.20.0018 and 9403.20.0020, are basket categories containing many products unrelated to boltless steel shelves, and much of the reported entry data do not contain quantity information. Therefore, we cannot rely on CBP entry data in selecting respondents. Instead, we will issue quantity and value questionnaires to each potential respondent named in the Petition,²⁰ and will base respondent selection on the responses received. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Enforcement & Compliance website (<http://trade.gov/enforcement/news.asp>). Exporters and producers that do not receive quantity and value questionnaires via mail may still submit a quantity and value response, and can obtain a copy from the Enforcement & Compliance website. The quantity and value questionnaire must be submitted by all PRC exporters/producers no later than September 26, 2014.

All quantity and value questionnaires must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 PM Eastern time by the date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement & Compliance's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above. We intend to make our decision regarding respondent selection within 20 days of publication of this *Federal Register* notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at <http://enforcement.trade.gov/apo>.

²⁰ See Volume I of the Petition at Exhibit I-9.

Distribution of Copies of the CVD Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), we have provided a copy of the public version of the Petition to the representatives of the GOC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of boltless steel shelves from the PRC materially injure, or threaten material injury to, a U.S. industry.²¹ A negative ITC determination will result in the investigation being terminated.²² Otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

On April 10, 2013, the Department published Definition of Factual Information and Time Limits, which modified two regulations related to AD and CVD proceedings: 1) the definition of factual information (19 CFR 351.102(b)(21)), and 2) the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of

²¹ See section 703(a)(2) of the Act.

²² See section 703(a)(1) of the Act.

remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i) – (iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to this investigation. Review the final rule, available at <http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information for this investigation.

Extension of Time Limits

On September 20, 2013, the Department published Extension of Time Limits,²³ which modified one regulation related to AD and CVD proceedings regarding the extension of time limits for submissions in such proceedings (19 CFR 351.302(c)). These modifications are effective for all segments initiated on or after October 21, 2013, and thus are applicable to this investigation. All parties should review the final rule, available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to requesting an extension.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to

²³ See Extension of Time Limits, 78 FR 57790 (September 20, 2013).

the accuracy and completeness of that information.²⁴ Parties are hereby reminded that the Department issued a final rule with respect to certification requirements, effective August 16, 2013, and that the revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any AD or CVD proceedings initiated on or after August 16, 2013, including this investigation, should use the formats for the revised certifications provided at the end of the Certifications Final Rule.²⁵ The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's website at <http://enforcement.trade.gov/apo/index.html>.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Date:
September 15, 2014

Paul Piquado
Assistant Secretary
For Enforcement and Compliance

²⁴ See section 782(b) of the Act.

²⁵ See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings, 78 FR 42678 (July 17, 2013) (Certifications Final Rule); see also the frequently asked questions regarding the Certifications Final Rule, available at the following: http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

Appendix

Scope of the Investigation

The scope of this investigation covers boltless steel shelving units prepackaged for sale, with or without decks (“boltless steel shelving”). The term “prepackaged for sale” means that, at a minimum, the steel vertical supports (i.e., uprights and posts) and steel horizontal supports (i.e., beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (e.g., two posts). The term “boltless” refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit, and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by this investigation may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term “deck” refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- wall-mounted shelving, defined as shelving that is hung on the wall and does not stand

- on, or transfer load to, the floor;²⁶
- wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
 - bulk-packed parts or components of boltless steel shelving units; and
 - made-to-order shelving systems.

Subject boltless steel shelving enters the United States through Harmonized Tariff Schedule of the United States (“HTSUS”) statistical subheadings 9403.20.0018 and 9403.20.0020, but may also enter through HTSUS 9403.10.0040. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2014-22494 Filed 09/19/2014 at 8:45 am; Publication Date: 09/22/2014]

²⁶ The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion.